Supreme Court, U.S.
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No. 92-1440

In The

Supreme Court of the United States

OCTOBER TERM, 1992

JACQUELYNE L. NEAL,

Petitioner,

v.

WILLIAM H. BROWN, et al., partners practicing law under the firm name of Schnader, Harrison, Segal & Lewis

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

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Respondents, in their brief in opposition, attempt to dissuade this Court from granting a writ of certiorari, by erroneously asserting that the lower court's decision to dismiss Petitioner's appeal was "correct" and was "wholly consistent with the decisions of every court of appeals to have considered the issue." [4-5, Brief in Opp.]

Respondents' current effort to support the lower court's decision is in wide contrast to the action taken by Respondents just three (3) months ago regarding the same decision. After Petitioner filed a 20-page motion with the lower court to stay the issuance of the mandate of its defective decision, Respondents remained silent and filed a one sentence reply, stating that "Defendants-Appellees take no position on plaintiff-appellant's Motion to Stay the Issuance of the Mandate served by mail on January 8, 1993. Respectfully submitted, Thomas Earl Patton (D.C. Bar No. 009761) . . . ." Respondents made no attempt to lend any support to the defective decision.

Respondents now claim (via a different counsel of record, who, like Thomas Earl Patton, appears as a defendant in Petitioner's multi-million dollar action) that the lower court's decision was "correct," and accordingly, Respondents attempt to support the defective ruling by citing various cases.

Suffice it to say, none of the cases offered by Respondents relates to the various issues raised in the petition, nor support the lower court's dismissal of Petitioner's appeal, inasmuch as the facts of the cases do not remotely relate to the facts of this case.

The cases cited by Respondents all relate to appeals taken under 28 U.S.C. §1291, regarding the sole denial of a motion to remand. Specifically, these cases simply held that a denial of remand, "standing alone" is not a final appealable order under §1291. See Three J Farms, Inc. v. Alton Box Board Co., 609 F.2d 112, 114 (4th Cir. 1979), cert. denied, 445 U.S. 911 (1980); Wilkins v. American Export-Isbrandtsen Lines, Inc., 401 F.2d 151 (2d Cir. 1968); Brough v. United Steelworkers of America, 437 F.2d 748, 749 (1st Cir. 1971). In the cited cases, appeal was not taken under §1292(a)(1) and the courts uniformly held that the order denying remand to the state court was unreviewable because the order did not involve an injunction, or that the plaintiff failed to seek district court certification for interlocutory appeal. See Rohrer, Hibler & Replogle, Inc. v. Perkins, 728 F.2d 860, 863 (7th Cir.), cert. denied, 469 U.S. 890 (1984); Estate of Bishop v. Bechtel Power Corp., 905 F.2d 1272, 1275 (9th Cir. 1990); Poirrier v. Nicklos Drilling Co., 648 F.2d 1063 (5th Cir. 1981).

Significantly, in Three J Farms, Inc., supra, the court elected to treat the appeal as a petition for writ of mandamus, and directed that the case be returned to the State court, notwithstanding the apparent lack of appealability under §1291. Similarly, in Aberle Hosiery Co. v. American Arbitration Ass'n., 461 F.2d 1005, 1006 (3d Cir. 1972), the court indicated that an interlocutory appeal of a separate order relating to an injunction, could have invoked the applicability of §1292(a)(1).

Respondents, like the lower court, are attempting to mix apples with oranges, by throwing Petitioner (who is obviously appearing pro se) into an arena (§1291) which is totally unrelated to §1292(a)(1), the statute upon which Petitioner's appeal was taken.

The cases offered by Respondents do not support Respondents' argument, nor support the Opinion, inasmuch as those cases are ingermane to the facts of Petitioner's case. The facts are clearly outlined in the petition within the Statement of the Case, and noticeably, Respondents did not attack and/or attempt to refute one statement contained in Petitioner's expansive Statement of the Case, including the noteworthy statement that "[t]he court . . . stripped the injunctive relief issue without addressing the undisputed fact that the need for injunctive relief still exists, inasmuch as Respondents have not abandoned their forum shopping efforts." [10, Pet.]

In lieu of divulging to this Court that the injunctive relief issue is not moot, Respondents shrewdly directed this Court's attention to various cases, asserting that "the courts of appeals have held that 28 U.S.C. §1292 is inapplicable where the injunction order that would form the basis for appellate jurisdiction is moot at the time the appeal is taken." [5, Brief in Opp.]

Significantly, three of the cases cited by Respondents clearly do not support Respondents' argument; rather, the cases embrace Petitioner's argument, i.e., that the injunctive relief issue is not moot inasmuch as there is "some cognizable danger of recurrent violation . . ." See Robert Stigwood Group Ltd. v. Hurwitz, 462 F.2d 910, 913 (2d Cir. 1972); Marilyn T. Inc. v. Evans, 803 F.2d 1383, 1385 (5th Cir. 1986); Brown v. New Orleans Clerks & Checkers Union, 590 F.2d 161, 165 (5th Cir. 1979). In each of these cases, the courts clearly recognized that when there is a "reasonable

expectation that the wrong will be repeated . . .,'' the issue before the court is not moot. The remaining cases offered by Respondents are equally unsupportive of Respondents' argument inasmuch as the injunctive relief issue, as well as the remand issue, were properly before the court. Rodriguez v. Handy, 802 F.2d 817 (5th Cir. 1986); H. K. Porter Co. v. Metropolitan Dade County, 650 F.2d 778 (5th Cir. 1981).

Notwithstanding Respondents having cited the foregoing cases for the proposition that ''the court of appeals' dismissal of the appeal was in complete accordance with well-settled law,'' Respondents conspicuously avoided making any definitive assertion to this Court that the issue of injunctive relief was allegedly moot at the time the appeal was taken by Petitioner. [5, Brief in Opp.]

Based upon the foregoing, it is clear that the cases cited by Respondents do not relate to the various issues raised in the petition, and the facts of the foregoing cases obviously do not embrace the facts of the attendant case. Therefore, all of the cities offered by Respondents in support of their arguments were obviously misplaced.

Respondents' assertion that ''[t]he petition raises no questions that deserve consideration by this Court,'' is totally unfounded. [4 Brief in Opp.; 14-25, Pet.] Respondents' baseless assertion represents nothing more than an unsupported conclusionary statement.

Via their unsupported statement, Respondents, in essence, are appealing to this Court to close its eyes to the issues presented in the petition, and allow all courts, hereinafter, to use the judicial system as a haven for attorneys who appear as defendants in cases involving fraudulent billing statements. Respondents, via their unsupported conclusionary statement, are in essence, appealing to this Court to send forth a resounding message to the American people that clients are easy prey for attorneys, and those who haul their attorneys into court raising claims involving fraudulent billing statements will have no protection within the judicial system.

Contrary to Respondents' additional baseless assertion [3, Brief in Opp.], the issues raised in the petition have national significance,

as clearly illuminated in the Reasons For Granting the Writ. [14-25, Pet.]

Respondents' 6-page brief contains deceptive statements, e.g., within Respondents' Counter-Statement of the Case, Respondents interjected their own testimony as being the testimony of Petitioner, by erroneously asserting that on October 5, 1990, pro se Petitioner commenced this action "against the law firm of Schnader, Harrison, Segal & Lewis . . . ." [2, Brief in Opp.]

Neither the face of Petitioner's Original Complaint [1A],[1] nor the Amended Complaint [93-95A], reflect in the caption that Petitioner was suing Schnader, Harrison, Segal & Lewis Law Firm; nor does the lead paragraph of the Complaint contain the caption of Schnader, Harrison, Segal & Lewis Law Firm. (Emphasis added) [2, Appellant's Reply Brief] As evidenced by paragraph 3 of the Complaint, the term "law firm" was used to identify the type of business in which Respondents are engaged, to wit, "doing business as a law firm." [2A; 96A; 2, Appellants' Reply Brief]

Petitioner clearly averred in [Appellant's] brief that "[t]he court below erred in failing to include in its Order that [Petitioner] did not sue the partnership as an entity; that [Petitioner] offered verifiable information demonstrating that feverish efforts were made by [Petitioner] to ascertain the identifications of all partners (a total of 102) prior to filing the Complaint . . . [and] . . . the efforts made by [Petitioner] to ascertain the identifications of all partners cannot, and do not, by any stretch of the imagination 'remotely' infer that she attempted to [sue], or believed in her mind or otherwise, that she was suing an entity." [3, Appellant's Reply Brief]

Respondents did not author Petitioner's Complaint nor accompany Petitioner upon the filing of her Complaint; therefore, Respondents cannot speak to and/or draw a solidified conclusion as to Petitioner's 'thought process' which existed prior to, and/or at the time of filing, inasmuch as Petitioner's 'thought process' was confined within

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1. Materials which appeared in the Appendix filed in the Court of Appeals shall be referred to as ["_____ A"]

Petitioner's mind. [3, Appellant's Reply Brief]

Respondents' brief in opposition represents nothing more than a charade. Respondents' inability to face the issues presented in the petition, without distorting the facts and juggling unrelated cases, further magnifies the need for this Court's review of the lower court's defective ruling.

CONCLUSION

For the reasons previously outlined in the petition, and based upon the foregoing reasons, this Court should grant the petition for writ of certiorari.

Respectfully submitted,

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April 19, 1993